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6 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
7 The Honorable Thomas O. Rice, U.S. District Court Judge

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 MICHAEL AVILEZ ESPINOZA,

12 Defendant.

Case No. 2:23-cr-30-TOR

PSIR OBJECTIONS

1 MICHAEL AVILEZ ESPINOZA, by counsel, Lorinda Meier Youngcourt of
2 the Federal Defenders of Eastern Washington and Idaho objects to paragraph 48 of
3 the presentence investigation report.

4 **I. 4-Level increase under §2G2.1(b)(b).**

5 Paragraph 48 applies a four-level increase under USSG §2G2.1(b)(4) finding
6 the offense involved material that portrays sadistic or masochistic conduct or other
7 depictions of violence.

8 The four-level increase does not apply in this case as there is no *material*
9 (video or photograph) which portrays what H.F. described in her interview with law
10 enforcement. What images do exist do not depict anal intercourse and H.F.'s face is
11 not shown. Objectively, there is nothing depicted which elevates the images of a
12 sexual act to sadistic or masochistic, thus warranting the enhancement.

13 The Sixth Circuit in *United States v. Corp*, 668 F.3d 379 (2012) emphasized that
14 the determination of whether material portrays sadistic or masochistic conduct is an
15 objective inquiry. Courts must assess the content of the material itself, considering
16 whether an objective viewer would perceive the depicted activity as inflicting physical
17 pain, emotional suffering, or humiliation on a minor, without regard to the actual
18 circumstances or intentions of those involved. Similarly, the Fifth Circuit in *United*
19 *States v. Nesmith*, 866 F.3d 677 (5th Cir. 2017) and other circuits have upheld this
20 objective standard. *United States v. Johnson*, 784 F.3d 1070, 1074 (7th Cir. 2015).

1 The closest the Ninth Circuit has come to addressing this issue was to hold that
2 images involving an adult male penetrating a prepubescent child is sadistic or
3 masochistic because the conduct depicted “necessarily hurt the child.” *United States v.*
4 *Reardon*, 349 F.3d, 608, 614-616 (9th Cir. 2003). H.F. was 16 years of age when the
5 photos were made and thus not prepubescent. H.F.’s face is not shown thus there is
6 nothing depicting pain or emotional suffering.

7 **II. Reserving objections to criminal history score**

8 Th defense has requested copies of the criminal court judgments for the
9 convictions set out in paragraphs 109, 110, 113, 117, and 122. He reserves the right
10 to object to the scoring if those records do not support the points assigned.

11 **III. Guideline Provision of 720 months.**

12 Mr. Espinoza objects to paragraph 219, in which probation reports that the
13 United States Guideline provides for custody of 720-months.

14 Dated: August 22, 2025

15 /s/Lorinda Meier Youngcourt
16 Lorinda Meier Youngcourt
Counsel for Michael Avilez Espinoza

17 **Certificate of Service**

18 I certify that on August 22, 2025, I electronically filed the foregoing with the
19 Clerk of the Court using the CM/ECF System, which will notify all counsel of record.

20 /s/Lorinda Meier Youngcourt
21 Lorinda Meier Youngcourt